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Washington, D.C. 20231



APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/173,821 10/16/98 RUDLAND

P 32040PCTUSA-

BAKER & BOTTS  
30 ROCKEFELLER PLAZA  
NEW YORK NY 10112-0228

HM22/0116

EXAMINER
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KAUSHAL, S	
ART UNIT	PAPER NUMBER

1633

15

DATE MAILED:

01/16/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**



**UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

*KAUSHAL*

ART UNIT

PAPER

15

DATE MAILED:

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**Commissioner of Patents and Trademarks**

The preliminary amendment filed on Paper No. 14 on 12/11/00 has been disapproved under US Patent Rule 1.115 because the preliminary amendment was received after the preparation of first office action. In response to CPA filed on 11/14/00 the official cation was mailed on 12/15/00 wherein the request for the preliminary amendment was received on 12/11/00.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sumesh Kaushal Ph.D. whose telephone number is (703) 305-6838. The examiner can normally be reached on Monday-Friday from 8:00 AM to 4:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Deborah Clark can be reached on (703) 305-4051. The fax-phone number for the organization where this application or proceeding is assigned as (703) 308-4242. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the patent analyst Tracey Johnson, whose telephone number is (703) 308-0377. If the claims are amended canceled and/or added the examiner requests an additional "Copy of all Pending Claims" attached to the response.

S. Kaushal, AU 1633

*Deborah Clark*

**DEBORAH J. R. CLARK  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600**

action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

(c) A submission as used in this section includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability. If reply to an Office action under 35 U.S.C. 132 is outstanding, the submission must meet the reply requirements of § 1.111.

(d) If an applicant timely files a submission and fee set forth in § 1.17(e), the Office will withdraw the finality of any Office action and the submission will be entered and considered. If an applicant files a request for continued examination under this section after appeal, but prior to a decision on the appeal, it will be treated as a request to withdraw the appeal and to reopen prosecution of the application before the examiner. An appeal brief under § 1.192 or a reply brief under § 1.193(b), or related papers, will not be considered a submission under this section.

(e) The provisions of this section do not apply to:

- (1) A provisional application;
- (2) An application for a utility or plant patent filed under 35 U.S.C. 111(a) before June 8, 1995;
- (3) An international application filed under 35 U.S.C. 363 before June 8, 1995;
- (4) An application for a design patent; or
- (5) A patent under reexamination

[Added 65 FR 14865, Mar. 20, 2000, effective May 29, 2000; revised 65 FR 50092, Aug. 16, 2000, effective Aug. 16, 2000]

## AMENDMENTS

### § 1.115 Preliminary amendments.

(a) A preliminary amendment is an amendment that is received in the Office (§ 1.6) on or before the mail date of the first Office action under § 1.104.

(b)(1) A preliminary amendment will be entered unless disapproved by the Commissioner. A preliminary amendment may be disapproved if the preliminary amendment unduly interferes with the preparation of a first Office action in an application. Factors that will be considered in disapproving a preliminary amendment include:

(i) The state of preparation of a first Office action as of the date of receipt (§ 1.6) of the preliminary amendment by the Office; and

(ii) The nature of any changes to the specification or claims that would result from entry of the preliminary amendment.

(2) A preliminary amendment will not be disapproved if it is filed no later than:

- (i) Three months from the filing date of an application under § 1.53(b);
- (ii) The filing date of a continued prosecution application under § 1.53(d); or
- (iii) Three months from the date the national stage is entered as set forth in § 1.491 in an international application.

(c) The time periods specified in paragraph (b)(2) of this section are not extendable.

[46 FR 29183, May 29, 1981; removed and reserved, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; added, 65 FR 54604, Sept. 8, 2000, effective Nov. 7, 2000]

### § 1.116 Amendments after final action or appeal.